



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,784	09/08/2003	Terrance C. Anderson	5544/306	1346

34205 7590 10/23/2006

OPPENHEIMER WOLFF & DONNELLY LLP
45 SOUTH SEVENTH STREET, SUITE 3300
MINNEAPOLIS, MN 55402

EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
----------	--------------

3782

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

Office Action Summary	Application No.		Applicant(s)	
	10/657,784		ANDERSON ET AL.	
	Examiner		Art Unit	
	Jes F. Pascua		3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) 10-12, 19, 20 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,13,15-18,21-24 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 7, 13-16 and 28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 20-22, 24 and 25 of copending Application No. 10/655,976. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 5, 6, 20-22, 25 and 25 of Application No. 10/655,976 contain every element of claims 1, 2, 7 and 13-16 of the present application and as such anticipate claims 1, 2, 7, 13-16 and 28 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-7, 17 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate written description of manufacturing an easy-snap mechanism with a gusseted package wherein the gusseted sides "have no dimension at a point adjacent to the upper edges of the front and rear walls" or the "upper portion of the sides are substantially dimensionless". There is no explicit discussion of the written description of the gusseted sides having no dimension at a point adjacent to the upper edges of the front and rear walls or the structure encompassed by the language "substantially dimensionless".

5. Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate

written description of manufacturing an easy-snap mechanism with a gusseted package wherein "no gussets exist at an upper portion of the bag". As a note, applicant's reliance on the incorporation by reference of the Forman patents would be misplaced, since the Forman patents are directed to forming an easy-snap closure on packages with gusseted sides or packages without gusseted sides. The Forman patents do not disclose the manufacture of easy-snap closures on packages with gusseted sides wherein there are no gussets required on the upper portion of the package. Applicant's reliance on the drawings to show possession of the claim recitation is misplaced because there is no explicit discussion in the written disclosure that the drawings show no gussets existing at an upper portion of the bag.

6. Claims 21-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide antecedent basis for a "reversible seal at an upper portion of the bag" and a "notched permanent seal at the bottom of the front and rear wells [sic]". This is a new matter rejection.

7. Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide antecedent basis for the "reclosable seal squeezing two layers of the flexible material from the tube to be juxtaposed with one another". This is a new matter rejection.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 is indefinite because it is incomplete. There is no further structure recited after "and" in the last line.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3782

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 5, 6, 8, 9, 13, 15-18, 21, 23 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,788,378 to Thomas (previously cited).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas and admitted prior art.

Thomas discloses the claimed invention except for bag being composed of a multi-layered film of thermoplastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multi-layered film of thermoplastic material to form the bag of Thomas, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Since applicant does not address the Examiner's assertion that it's within the general skill of a worker in the art of bags to use a multi-layered film of thermoplastic material to form bags, the assertion is taken to be admitted prior art.

14. Claims 7 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas and admitted prior art.

Thomas discloses the claimed invention except for the reclosable device being an easy-snap (i.e. a reclosable seal squeezing two layers of flexible material from a tube to be juxtaposed with one another). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the zipper of Thomas with an easy-snap since the Examiner takes Official Notice of the equivalence of zippers and easy-snaps for their use in the bag art and the selection of any of these known equivalents to reclose the bag of Thomas would be within the level of ordinary skill in the art. Since applicant does not address the Examiner's assertion of Official Notice of the equivalence of zippers and easy snaps for their use in the bag art, the assertion is taken to be admitted prior art.

15. Claims 1, 2, 4, 5, 8, 13, 17, 18, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,364,189 to Kuge et al. and Thomas.

Kuge et al. discloses the claimed device except for the bottom portion being folded flat. Thomas discloses that it is known in the art to provide a fold flat, bottom portion an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom portion of Kuge et al. with the folding disclosed by Thomas, in order to render the bag self-standing.

Response to Arguments

16. Applicant's arguments with respect to claims 1-9, 13-18, 21-24 and 28 have been considered but are moot in view of the new grounds of rejection.

Applicant's argument that Thomas requires complex structures and seals to achieve the reclosable stand up package features does not remove the fact that Thomas discloses the claimed features of applicant's reclosable stand up package, in particular, the lack of gusseted sides in the upper portion of the package. Regarding applicant's remarks concerning the claimed continuous smooth transition between the gusseted lower portion and the dimensionless upper portion, Fig. 4B Thomas shows the same transition applicant depicts in their drawings. Moreover, Thomas shows a continuous smooth transition between the gusseted lower portion and the dimensionless upper portion to the same degree applicant has set forth the metes and bounds of the phrase "continuous smooth transition" in the terminology of the original specification.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

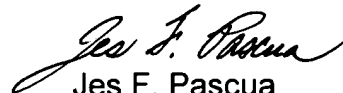
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP

6/11

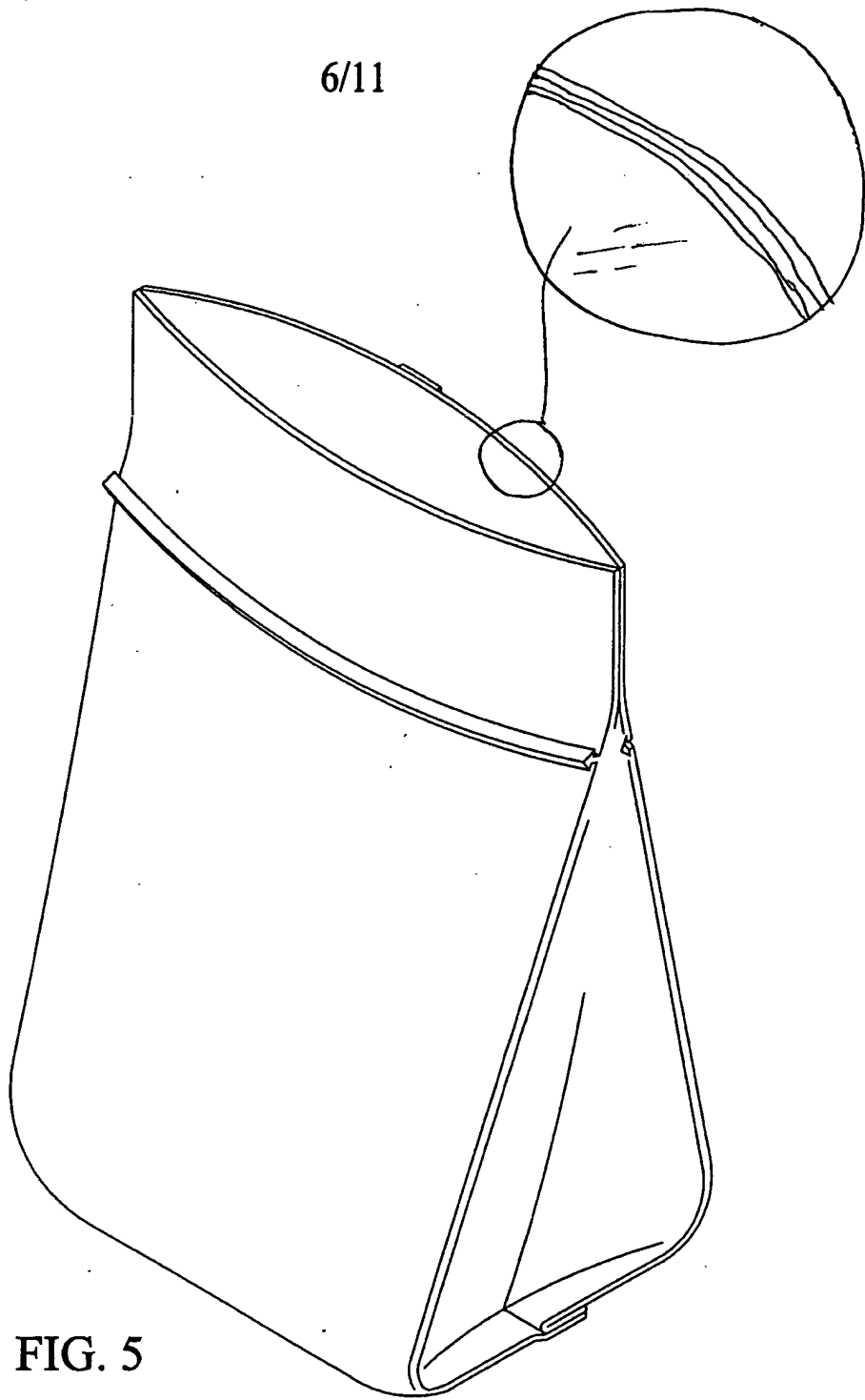


FIG. 5

Approved.

[Signature]
10/17/06